

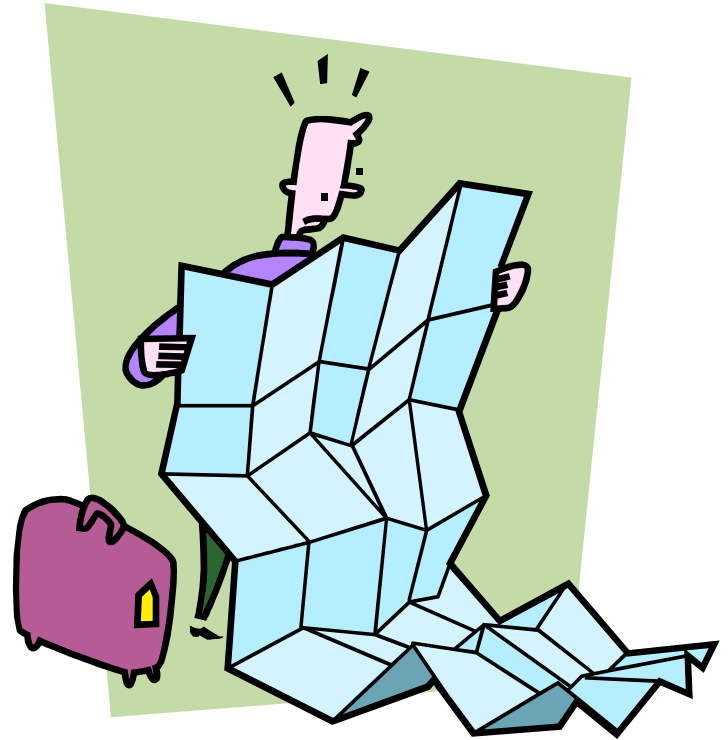
2011 ETHICS WORKSHOP

Post-Government Service Employment Restrictions



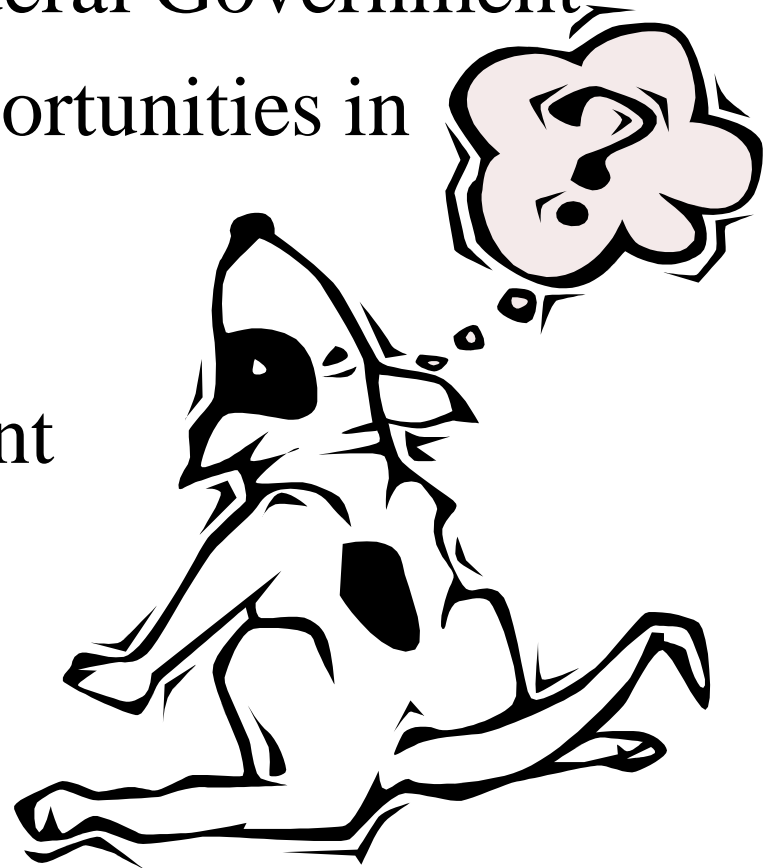
Road Map

- Purpose of Restrictions
- Seeking Employment
- Federal Employment Restrictions
- Private Employment Restrictions
- Foreign Employment Restrictions



Purpose of Restrictions

- Prevent conflicts of interest
- Promote economy in Federal Government
- Expand employment opportunities in the Federal system
- Preserve the public's confidence in Government integrity



Rendering Competent Advice

(always a pretty good idea)

- Need full disclosure!!!
 - Client Questionnaire
- Who is the client?
 - JER § 9-500
- Effect of advice?



OGE AUDIT

- OGE will Audit whether counseling is provided, records are kept, and if the advice is accurate

Seeking Employment

- Conflicts of Interest
- Gifts From Prospective Employers
- Working on Terminal Leave



Conflicts of Interest

18 U.S.C. § 208

5 C.F.R. § 2635.402

- You may not take any official action that affects a company with which you are negotiating for employment or have an arrangement concerning prospective employment
- JER 5-301 applies to National Guard and enlisted personnel



Careers



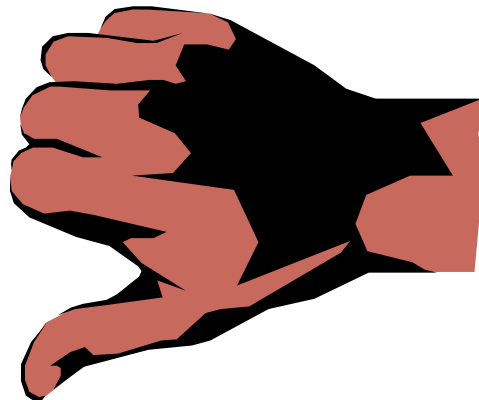
“Seeking Employment”

- 5 C.F.R.2635.603(b)
- You are “seeking employment” when you:
 - engage in negotiations
 - make unsolicited employment contact
 - includes sending resume
 - excludes requesting job application
 - respond to unsolicited proposal (except unconditional rejection)



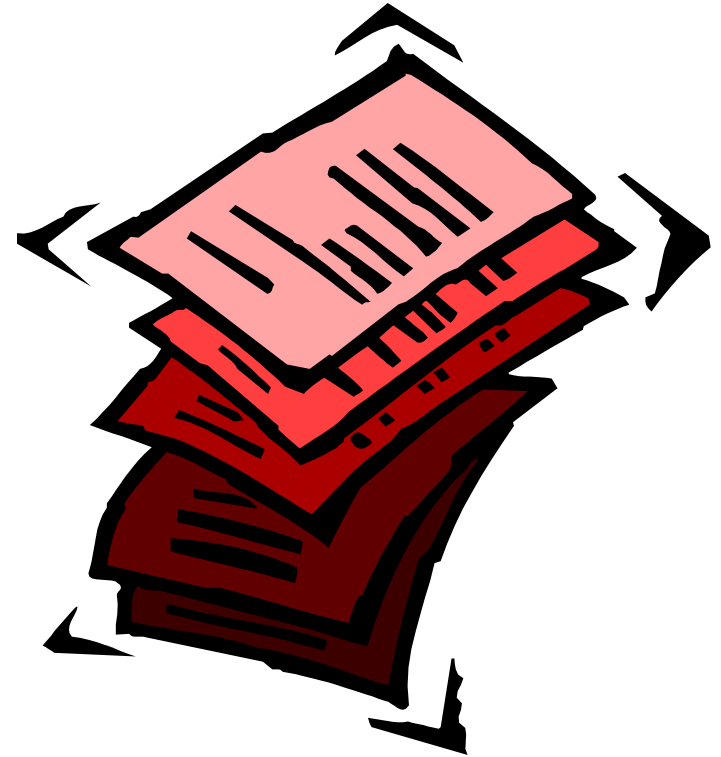
Termination of Seeking Employment

- You are no longer “seeking employment” when:
 - either party rejects proposal and discussions have terminated, or
 - two months have passed after mailing resume and no response



Disqualification

- To avoid violation:
 - Take no action
 - Written notice to supervisor (JER 2-204)
 - Supervisor response:
 - written
 - shielding procedures
 - copy to Ethics Counselor, subordinates



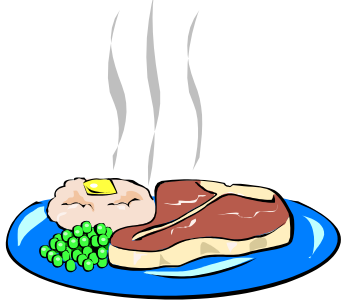
Former Procurement Integrity Act

- Special reporting rules for procurement officials
 - Contacts with bidders/offerors in procurements $\geq \$100K$
 - Written “contact report”
 - Special disqualification notice
- Pre-award disclosure of procurement information prohibited (present and former officials)



Gifts From Prospective Employers

5 C.F.R. § 2635.204(e)(3)



- Meals, lodging, transportation, etc. *customarily* offered
- Don't forget to disqualify
 - if necessary



Terminal Leave

- May work while on terminal leave
- Financial disclosure form filers (450/278) must obtain agency designee approval if employer will be prohibited source
- Active Duty Officers may not accept outside employment that will interfere with duty performance or require separation from service – 10 U.S.C. 973(a)



Federal Employment While on Terminal Leave

- If not a “civil office”
 - may receive pay for Federal position and military pay and allowances during terminal leave
 - 5 U.S.C. 5534a
 - DODD 1344.10



No Civil Offices During Terminal Leave!

- Civil Office Statute - 10 U.S.C. § 973
 - Active duty military officers may not hold civil office
 - Federal/State/Local
 - Exercise Sovereign Power
 - USA/DA/City Attorney/County Clerk
 - AUSA/ADA/Notary



City Attorney
Casey Gwinn



UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF IOWA



Can't Be an Agent While on Terminal Leave!

- 18 U.S.C. §§ 203/205
- Cannot act as an agent for another before any Federal agency



Retired At Last!!!





Restrictions on Federal Employment



- Dual compensation laws



- 6-month cooling-off period before working in DoD



Dual Compensation



- Repealed!!!
- Section 651 of the NDAA for FY 2000 (P.L. 106-65) repealed 5 USC 5532 in its entirety
- No reduction in retired or retainer pay for retired member of the Armed Forces who are employed in Federal civilian positions

6-Month Cooling-Off Period

- No civilian employment within DoD for six months (5 U.S.C. 3326)
- Applies to all retired military members
- Waivers available from Secretary of hiring component



Private Employment Restrictions

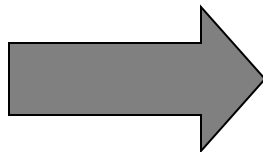
- Representational restrictions - 18 USC 207
- Procurement Integrity Act
 - Now codified at 41 U.S.C. 2101-2107 without title
- Repealed
 - 10 USC 2397
 - 10 USC 281
 - 37 USC 801
 - No more DD Form 1787



Private Employment Restrictions

18 U.S.C. § 207

- Designed to curb “switching sides”
- ***DOES NOT*** prohibit acceptance of employment
- ***MAY*** restrict scope of employee’s activities



Representational Restrictions

18 U.S.C. § 207

- Prohibits representing another before U.S. Government with intent to influence

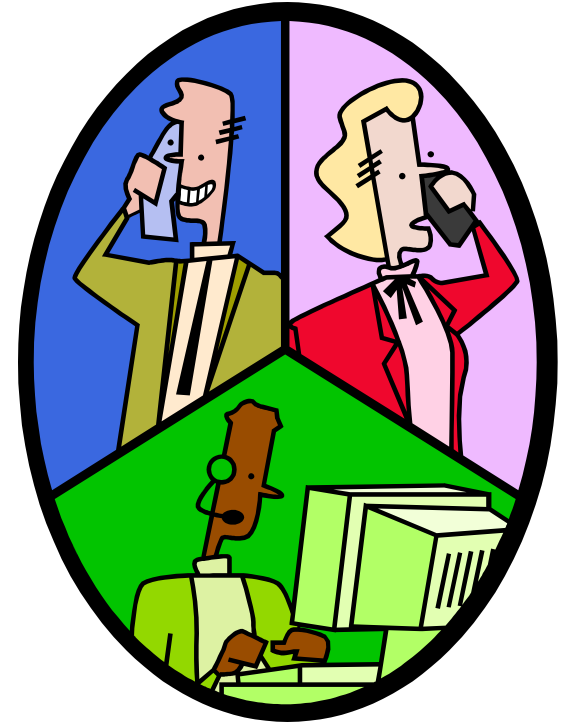
- Lifetime ban
- 2-year ban
- 1-year cooling-off period for senior employees
- 1-year ban on treaty negotiations
- 1-year ban on senior employees representing foreign entities



“We represent the Lollipop Guild!”

Lifetime Ban

- 18 U.S.C. § 207(a)(1)
- May not:
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Where participated “personally and substantially” as Federal employee
 - Behind-the-scenes assistance permitted



Representational Restrictions

Definitions

- **Particular matter -- includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.**
- **Intent to influence -- seeking some discretionary action, ruling, benefit, or approval. Does not include purely social contacts or requesting publicly available information.**

Representational Restrictions

Definitions

- Participate personally and substantially -- to participate directly and significantly by decision, approval, recommendation, rendering of advice or investigation. Includes actions of a subordinate if actually directed by the former employee.

Representational Restrictions

2-Year Ban

- *18 U.S.C. § 207(a)(2)*. May not, within 2 years of termination of Government service
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Under “official responsibility” during last year of Government service
- Behind-the-scenes assistance permitted



Representational Restrictions

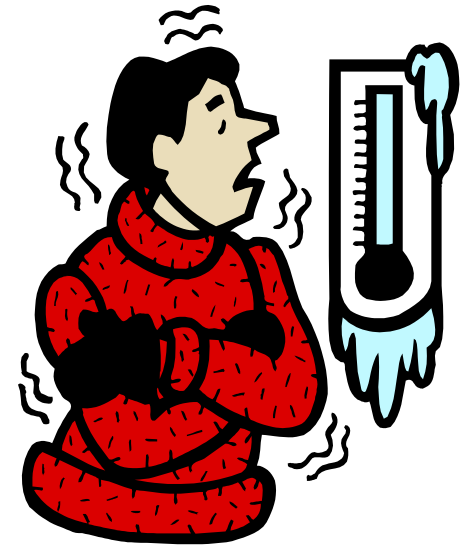
Definitions

- **Official responsibility -- direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.**
- **Administrative authority -- planning, organizing, and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter, such as regularity of budgeting procedures, public or community relations aspects, or EEO considerations.**

Representational Restrictions

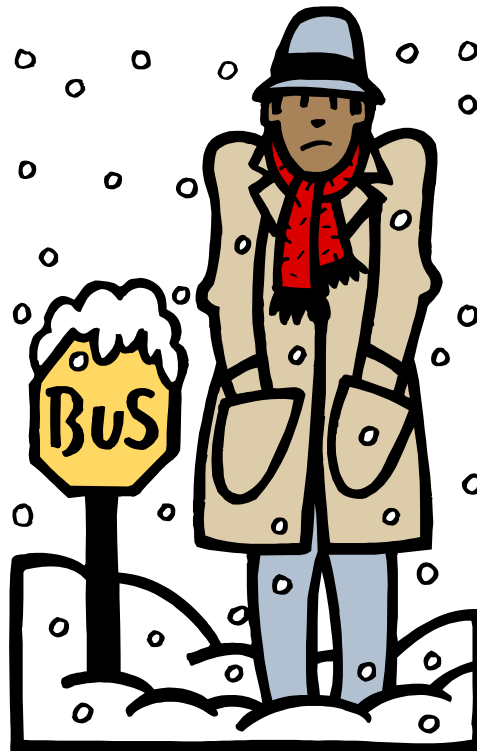
1-Year Cooling-Off Period

- *18 U.S.C. § 207(c)*
 - Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II)).
 - Prohibits communication or appearance before *former agency*, on behalf of another with intent to influence, on any matter where official action is sought



1-Year Cooling-Off Period

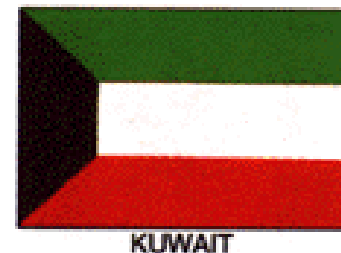
- Behind-the-scenes assistance permitted
- Communications to other DoD components permitted
- Dual-Hatted



Representational Restrictions

1-year Ban on Treaty Negotiations

- *18 U.S.C. § 207(b)*. May not **represent, aid, or advise anyone** concerning ongoing treaty negotiations if:
 - participated personally and substantially in negotiations during last year of service
 - had access to inside information
 - representation, assistance, or advice is based on such inside information
- **NO** behind-the-scenes assistance allowed



Representational Restrictions

1-Year Ban Relating to Foreign Entities

- *18 U.S.C. § 207(f)*

- Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II).)



- Prohibits, within 1 year of terminating Government service:



- **representing foreign entity before any U.S. department, agency, etc. with intent to influence;**
- **aiding or advising foreign entity with intent to influence decision of U.S. official**
- **NO** behind-the-scenes assistance

New Procurement Integrity Act

- No longer has a name; codified on 1/4/11 at 41 U.S.C. 2101-2107
- Still Applies to employees who retire on or after 1 January 1997; just finally codified
- Bars acceptance of compensation from contractor for 1 year after certain participation in procurement of:
 - contracts, subcontracts, modifications, and other actions > \$10M



Triggers

- Served as Procuring Contract Officer, Source Selection Authority, Source Selection Evaluation Board Member, Chief of Financial or Technical Evaluation Team for procurement > \$10M
- Served as Program Manager, Deputy Program Manager, or Administrative Contracting Officer for procurement > \$10M



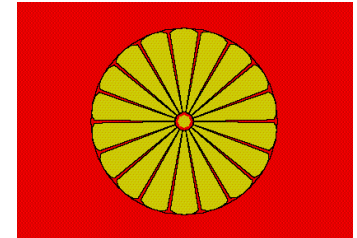
- Personally made decision to:
 - award a contract, subcontract, modification, or task order > \$10M
 - establish overhead or other rates applicable to contract > \$10M
 - approve issuance of a contract payment > \$10M
 - pay or settle a claim > \$10M



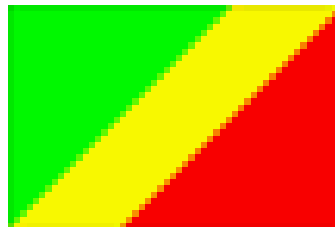
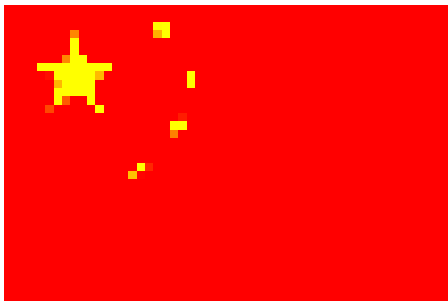
Executive Order 13490 and Pledge

- Applies to Political appointees
- Senior Officials have 2 year cooling off
- No former political appointee can lobby current political appointees in the executive branch until administration is over

Foreign Entity



- Foreign government
- Person/group exercising sovereign political jurisdiction
- Foreign political parties
- Foreign commercial corporation if exercises the function of a sovereign



Foreign Employment

- Constitution, Article I, § 9, clause 8
 - No title of nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.



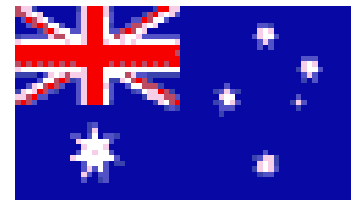
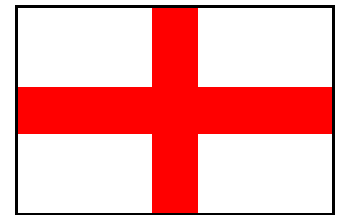
Foreign Employment

- Congressional Consent via Statute
 - Civil Employment
 - Military forces of “newly democratic nation”
- SEC Of SERVICE and SECSTATE approval required for employment with a foreign government
 - includes any entity owned or controlled by a foreign government, e.g., commercial or educational entities



Foreign Employment

- May require registration as a Foreign Agent with Department of Justice
- Loss of Citizenship?
 - Generally means loss of retired pay
- POCs
 - Deskbook, p. 29, for each service



Public Financial Disclosure Filers

- Must file termination SF 278
 - not more than 30 days after retirement date



JER CHANGES

- Must include discussion of post-employment and disqualification issues in annual ethics training
- Annual certification that public disclosure filers are aware of post employment laws
- Ethics officials provide post-employment counseling as part of exit briefing

OPM Notice

- Departments and agencies must notify all public filers subject to 18 U.S.C. 207(c) what the restrictions are, restrictions regarding 18 U.S.C. 207(f), and the penalties for violating 18 U.S.C. 207.
5 C.F.R. part 730

Senate Armed Services Committee Requirement

- Maintain database of PSGE opinions for SES, General and Flag Officers paid at 0-7 or above, Procurement Officials set forth in 41 U.S.C. 423, and those officials in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code, who, within two years after leaving service in the Department, expect to receive compensation from a defense contractor. P.L. 110-181, section 847

Senate Armed Services Committee Requirement (cont.)

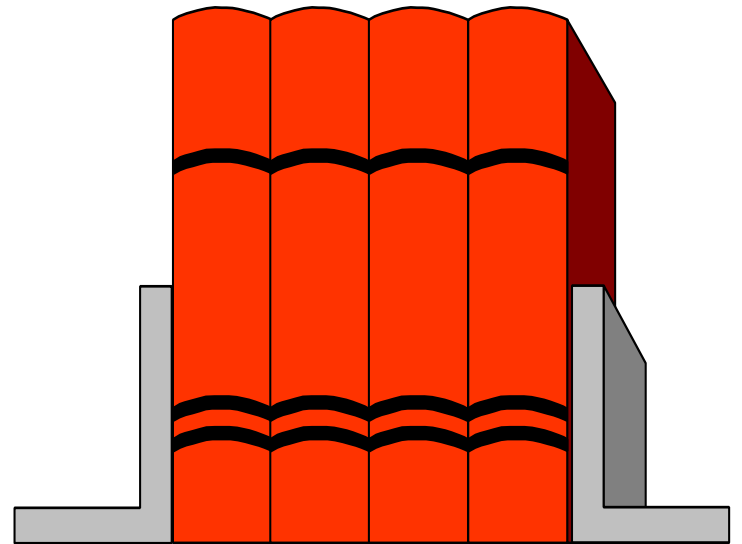
- These officials must request the opinion in the situation where they participated personally and substantially in an acquisition in excess of \$10,000,000.

Senate Armed Services Committee Requirement (cont.)

- Retain opinions for five years
- IG shall conduct periodic reviews to ensure opinions are provided and retained
- Database at page 32 of Deskbook

Materials

- PGE Service Employment Questionnaire
DD Form 2945
- Form Letters/Discussion



Questions?

